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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/593,546	06/14/2000	Dave Robinson	00-0826	7890

7590

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EXAMINER

CHIANG, JACK

ART UNIT

PAPER NUMBER

2642

DATE MAILED: 12/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/593546

Applicant(s)

D. Robinson

Examiner

J. Chang

Group Art Unit

2642

#5

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE -3- MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 12-05-02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-19 is/are pending in the application.
- Of the above claim(s) 1-6, 8-13 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 7, 14-19 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

RESTRICTION

1. Applicant's election without traverse of claims 14-19, in Paper No. 4 is acknowledged.

Claims 7, 14-19 are examined, claims 1-6, 8-13 are withdrawn from further consideration.

(NOTE: correction on previous restriction, only claim 7 is generic).

A call was made to Mr. Ivar M. Kaardal on 12-17-02, Mr. Kaardal agrees to have claims 7, 14-19 examined, and claims 1-6 and 8-13 have been withdrawn from further consideration.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 7, 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Provence (US 5501329).

Regarding claim 7, Provence shows:

An earpiece cover attachment (10) comprising:

A central wall (12) having front and back surfaces and an outer perimeter;

A perimeter wall (16);

A space (for the handset);

Holes (26);

A mouthpiece cover attachment (10) comprising:

A primary wall (12) having front and back surfaces and an outer perimeter;

A peripheral wall (16);

A space (for the handset); and

Holes (26).

Regarding claims 14-15, Provenance shows:

a case (40);

a lid and its open and closed positions (see 40).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Provenance in view of Sherman (US 3856571).

Regarding claims 16-18, Provenance shows the case (40).

Provenance differs from the claimed invention in that it does not show the design of the claimed case, such as a central section, the pair of lobes, the locking mechanism or tab.

However, Sherman teaches providing a case (14) having a central section (location of 88), a pair of lobes (80), and the locking tab (88).

Hence, both Provence and Sherman are carrying cases which are commonly carried by users. Although the products that are being carried are different, but these products are carried and used together everyday by consumers. Therefore, it would have been obvious for one skilled in the art to apply the design of Sherman's carrying case to carry sanitation covers, such as Provence's covers or other design of sanitation covers. This can be considered as an intended use of the design of Sherman's case in the environment shown by Provence, because the function and design of Sherman's case is substantially the same, the change in the product that is being carried would not change the overall function and design of the case.

6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Provence in view of Lo et al. (US 5054063).

Regarding claim 19, Provence shows the primary wall of the mouthpiece (12, 10).

Provence differs from the claimed invention in that it does not show a marking.

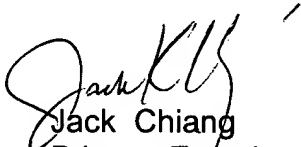
However, Lo, in a phone cover, teaches providing a marking (ADVERTISEMENT) on the primary wall of a mouthpiece (col. 3, lines 28-35).

Hence, it is commonly seen that products are printed with the information of the manufacture, including address, phone numbers and instruction etc.. Therefore, it would have been obvious for one skilled in the art to modify Provence with a marking as taught by Lo, such that to market the product and the manufacture, this is commonly done by manufacture and therefore would have been obvious for one skilled in the art.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Chiang whose telephone number is 703-305-4728. The examiner can normally be reached on Mon.-Fri. from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Admad Matar, can be reached on (703) 305-4731. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.


Jack Chiang
Primary Examiner
Art Unit 2642